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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,966	09/06/2001	Larry Neil Mackey	U 013595-2	6640

27752 7590 12/10/2004

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 12/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/914,966

Applicant(s)

MACKEY ET AL.

Examiner

Cheryl Juska

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 September 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-18 and 20-32 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 11-18 and 20-32 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed September 27, 2004, has been entered. Claims 11, 29, and 30 have been amended as requested and new claims 31 and 32 have been added. Claims 1-10 and 19 are cancelled. Thus, the pending claims are 11-18 and 20-32.

2. Said amendment is sufficient to overcome the 112, 1st and 2nd rejections set forth in sections 6-11 of the last Office Action. Said amendment is also sufficient to withdraw the current 102/103 rejection based upon Hernandez (US 4,243,480) as set forth in section 14 of the last Office Action. Specifically, applicant has amended the independent claims to include the limitation that starch fiber has an average fiber diameter of less than 10 microns, while deleting the limitations to dtex and T_g. Since Hernandez teaches a fiber diameter ranging from 10-500 microns, the new limitation is not anticipated by Hernandez. However, said amendment is not sufficient to patentably distinguish the present invention from the prior art.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 11-13, 15-18, 20-27, 29, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,243,480 issued to Hernandez et al.

As noted above, Hernandez teaches a starch fiber diameter of 10-500 microns rather than the presently claimed less than 10 microns. However, it is argued that the claims are obvious over the teachings of Hernandez. Specifically, it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 205 USPQ 215. In the instant case, decreasing the fiber diameter will produce a softer, more absorbent product. Therefore, said claims are rejected as being obvious over the cited Hernandez reference.

5. Claim 14 stands rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Hernandez reference in view of US 5,516,815 issued to Buehler et al. as set forth in section 15 of the last Office Action.

6. Claim 28 stands rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Hernandez reference as set forth in section 16 of the last Office Action.

7. Claims 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Hernandez patent

New claims 31 and 32 are drawn to the fiber of claim 11 wherein said fiber is a melt blown fiber and a spunbond fiber, respectively. Although Hernandez teaches fiber formation via solvent spinning, said claims are rejected as being obvious over the reference. Specifically, the limitations of claims 31 and 32 amount to method limitations in an article claim. As such, said limitations are only given weight to the extent that said limitations produce a structurally different product. It is believed that the claimed melt spun fibers are not materially different than the solvent spun fibers of Hernandez. Therefore, claims 31 and 32 are rejected as being obvious over the cited prior art.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

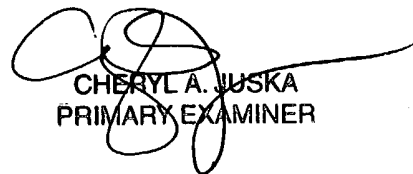
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CHERYL A. JUSKA
PRIMARY EXAMINER

cj
December 8, 2004